



Report to the Auburn City Council

Action Item

Agenda Item No. 2

City Manager's Approval

To: Mayor and City Council Members
From: Wilfred Wong, Community Development Director
Date: August 24, 2009
Subject: Consultant Agreement to administer CDBG Revolving Loan Fund Program

The Issue

Should the City enter into a consultant agreement with Community Development Services (CDS) to administer the City's CDBG Revolving Loan Fund Program?

Conclusions and Recommendations

By Resolution authorize the Community Development Director to execute a consultant agreement between the City of Auburn and Community Development Services to administer the City's CDBG Revolving Loan Fund Program.

Background

Since 2003, SEDCorp has been the City's consultant for the CDBG Revolving Loan Fund Program. Due to the complexities of the CDBG program, SEDCorp staff is no longer interested in administering this program. For the past year SEDCorp has contracted with CDS for much of the Revolving Loan Fund Program work.

Staff sent out a Request for Proposals for administrative services for the City's CDBG Revolving Loan Fund. Two proposals were submitted. Staff recommends that the City enter into a consultant agreement with CDS due to their familiarity with Auburn's program and their proposed budget.

The proposed agreement will be for three (3) years and not to exceed \$150,000. For additional information find attached the Agreement for Consulting Services (Exhibit A).

Alternatives Available to Council; Implications of Alternatives

1. Approve the consultant agreement with CDS.
2. Deny the consultant agreement with CDS.

Fiscal Impact

There will be no fiscal impact upon the General Fund. Services provided by CDS will be funded through the City's Revolving Loan Fund Program Income and CDBG Economic Development grants.

Additional Information

- A. Resolution with attached agreement and scope of services for CDS

RESOLUTION NO. 09-

RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH
COMMUNITY DEVELOPMENT SERVICES (CDS)

THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City of Auburn (City) does hereby approve a Professional Services Agreement between Community Development Services (CDS) and the City to administer the City's CDBG Revolving Loan Fund Program.

The Community Development Director is hereby authorized and directed to execute said Professional Services Agreement on behalf of the City.

DATED: August 24, 2009

J.M. Holmes, Mayor

ATTEST:

Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular meeting of the City of Auburn held on the 24th day of August, 2009 by the following vote on roll call:

Ayes:

Noes:

Absent:

Joseph G. R. Labrie, City Clerk

CITY OF AUBURN
PROFESSIONAL SERVICES AGREEMENT
FOR
ADMINISTRATIVE SERVICES FOR THE CITY OF AUBURN
CDBG BUSINESS LOAN PROGRAMS

This Agreement is entered into this 24th day of August, 2009, by and between the City of Auburn, a California municipal corporation ("City"), and Parker, Lucas, and Associates dba Community Development Services (CDS), a California S Corporation ("Consultant").

I. RECITALS

- A. Consultant desires to perform and assume responsibility for the provision of professional financial consultant services required by the City on the terms and conditions set forth in this Agreement.
- B. Consultant has presented a proposal for such services to the City, dated July 24, 2009, (attached hereto and incorporated herein as Exhibit "A") and is duly licensed, qualified and experienced to perform those services
- C. Consultant agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Agreement is based on such independent investigation and research.
- D. City desires to engage Consultant to render such services as set forth in this Agreement.

II. AGREEMENT

1. Scope of Services.

1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services and incidental and customary work necessary to fully and adequately supply the necessary professional grant preparation consultant services ("Services"). The Services are more particularly described in Exhibit "A."

2. Schedule of Services.

2.1 Schedule of Services. The Services of Consultant are to commence upon execution of this Agreement by the City on August 24, 2009 and shall be undertaken and

completed in a prompt and timely manner, pursuant to the schedule outlined in the Scope of Work, more particularly described in Exhibit "A."

2.2 Expiration Date. The term of this Agreement shall expire on August 24, 2012 at 11:59 p.m. unless extended by written agreement of the parties or terminated earlier in accordance with Section 10 ("Termination of Agreement") below.

2.3 Extension of Time. Consultant may, for good cause, request extensions of time to perform the Services required hereunder. Such extensions shall be authorized in advance by the City in writing and shall be incorporated in written amendments to this Agreement.

3. Fees and Payments.

3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "A." The total compensation shall not exceed the sum of One Hundred Fifty Thousand Dollars (\$150,000) without City's prior written approval.

3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within forty-five (45) days of receiving such statement, review the statement and pay all approved charges thereon.

4. Changes.

4.1 The Parties may, from time to time, request changes in the scope of the Services of Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of Consultant's compensation and/or changes in the schedule must be authorized in advance by the City in writing. Mutually agreed changes shall be incorporated in written amendments to the Agreement.

5. Responsibilities of Consultant.

5.1 Independent Contractor; Control and Payment of Subordinates. Consultant enters into this Agreement as an independent contractor and not as an employee of the City. Consultant shall have no power or authority by this Agreement to bind the City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Consultant are employees, agents, contractors or subcontractors of the Consultant and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Consultant by any such employees, agents, contractors or subcontractors, or any other person resulting from performance of this Agreement.

5.2 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

5.3 Project Manager. The Consultant shall designate a project manager who at all times shall represent the Consultant before the City on all matters relating to this Agreement. The project manager shall continue in such capacity unless and until he or she is removed at the request of the City, is no longer employed by Consultant or replaced with the written approval of the City which shall not be unreasonably withheld.

5.4 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City staff, consultants and other staff at all reasonable times. City agrees to work closely with Consultant's staff in the performance of Services and shall be available to Consultant's staff at all reasonable times.

5.5 Warranty. Consultant agrees and represents that it is qualified to properly provide the Services set forth in Exhibit "A" in a manner which is consistent with the generally accepted standards of Consultant's profession. Consultant further represents and agrees that it will perform said Services in a legally adequate manner in conformance with applicable federal, state and local laws and guidelines.

6. Insurance.

6.1 Time for Compliance. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

6.2 Types of Required Coverages. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, the Consultant in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance.

6.2.1 Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least \$1,000,000 per occurrence. Defense costs shall be paid in addition to the limits.

The policy shall contain no endorsements or provisions limiting coverage for (1) products and completed operations; (2) contractual liability; (3) third party action over claims; or (4) cross liability exclusion for claims or suits by one insured against another.

6.2.2 Automobile Liability: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of \$1,000,000 each accident.

6.2.3 Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

6.2.4 Professional Liability: Professional Liability insurance for errors and omissions with minimum limits of \$1,000,000. Covered Professional Services shall specifically include all work to be performed under the Agreement.

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

6.3 Endorsements.

6.3.1 The policy or policies of insurance required by Sections 6.2.1 Commercial General Liability and 6.2.2 Automobile Liability shall be endorsed to provide the following:

6.3.1.1 Additional Insured: The indemnified parties shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the Agreement.

6.3.1.2 Primary Insurance and Non-Contributing Insurance: This insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance.

6.3.1.3 Severability: In the event of one insured, whether named or additional, incurs liability to any other of the insureds, whether named or additional, the policy shall cover the insured against whom claim is or may be made in the same manner as if separate policies had been issued to each insured, except that the limits of insurance shall not be increased thereby.

6.3.1.4 Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon the City except ten (10) days prior written notice shall be allowed for non-payment of premium.

6.3.1.5 Duties: Any failure by the named insured to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the indemnified parties.

6.3.1.6 Applicability: That the coverage provided therein shall apply to the obligations assumed by the Consultant under the indemnity provisions of the

Agreement, unless the policy or policies contain a blanket form of contractual liability coverage.

6.3.2 The policy or policies of insurance required by Section 6.2.3 Workers' Compensation shall be endorsed, as follows:

6.3.2.1 Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

6.3.2.2 Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon the City except ten (10) days prior written notice shall be allowed for non-payment of premium.

6.3.3 The policy or policies of insurance required by Section 6.2.4 Professional Liability shall be endorsed, as follows:

6.3.3.1 Cancellation: The policy shall not be canceled or the coverage suspended, voided, reduced or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon the City except ten (10) days prior written notice shall be allowed for non-payment of premium.

6.4 Deductible. Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

6.5 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

6.6 Failure to Maintain Coverage. Consultant agrees to suspend and cease all operations hereunder during such period of time if the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement.

In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

6.7 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

6.8 Insurance for Subconsultants. All subconsultants shall be included as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured to the subconsultant's policies.

7. Ownership of Materials and Confidentiality.

7.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse or sublicense any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data").

Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City.

City shall not be limited in any way in its use or modification of the Documents and Data at any time, provided that any such use or modification not within the purposes intended by this Agreement shall be at City's sole risk.

7.2 Confidentiality. All Documents & Data are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the City, except by court order.

8. Accounting Records.

8.1 Maintenance and Inspection. Consultant shall maintain and make available for inspection by the City and its auditor's accurate records of all its costs, disbursements and receipts with respect to any work under this Agreement. Such inspections may be made during regular office hours at any time until one (1) year after the final payments under this Agreement are made to the Consultant.

9. Subcontracting.

9.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

10. Termination of Agreement.

10.1 Grounds for Termination. City may, by written notice to Consultant, terminate all or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

10.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

10.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

11. General Provisions.

11.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

City: City of Auburn
1225 Lincoln Way
Auburn, CA 95603
Attn: Wilfred Wong, Community Development Director

Consultant: Parker, Lucas & Associates, dba Community Development Services (CDS)
P.O. Box 645
Glenhaven, CA 95443
Attn: Jeff Lucas, President

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

11.2 Indemnification. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of Consultant, its officials, officers, employees, agents, subcontractors and subconsultants arising out of or in connection with the performance of the Services or this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses except such loss or damage which was caused by the active negligence, sole negligence, or willful misconduct of the City.

Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents or volunteers.

11.3 Prohibited Interests. Consultant covenants that neither it, nor any of its employees, agents, contractors or subcontractors has any interest, nor shall they acquire any interest, direct or indirect, in the subject of the Agreement, nor any other interest which would conflict in any manner or degree with the performance of the Services hereunder.

11.4 Prevailing Wages. Consultant is aware of the requirements of California Labor Code section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are subject to the Prevailing Wage Laws, Consultant agrees to fully comply with such Prevailing Wage Laws.

11.5 Equal Opportunity Employment. Consultant shall not engage in unlawful employment discrimination. Such unlawful employment discrimination includes, but is not limited to, employment discrimination based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation.

11.6 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

11.7 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and all other costs of such action.

11.8 Assignment or Transfer. Consultant shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of the City, which will not be unreasonably withheld. Provided, however, that claims for money due or to become due Consultant from the City under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer, whether voluntary or involuntary, shall be furnished promptly to the City.

11.9 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

11.10 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

11.11 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

11.12 Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Services specified herein. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement, except those contained in or referred to in the writing.

11.13 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Yolo County.

11.14 Time of Essence. Time is of the essence for each and every provision of this Agreement.

11.15 Interpretation. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party.

11.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

11.17 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.

11.18 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

11.19 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF AUBURN

**Parker, Lucas & Associates dba
Community Development Services (CDS)**

By: _____
Wilfred Wong
Community Development Director

By: _____
Jeff Lucas
President

Attest:

Attest:

By: _____
Joseph G. R. Labrie
City Clerk

By: _____
Dana Obermeyer
Chief Financial Officer

Approved as to Form:

By: _____
Michael Colantuono
City Attorney

1. Loan Servicing Activities

CDS will perform loan collection and servicing activities on all open City loans as follows:

- Issuing annual coupon books and collecting monthly payments.
- Issuing monthly payments to the City for all payments collected.
- Issuing IRS Form 1098 to borrower at end of year showing interest paid.
- Monitoring payments and taking delinquency action as follows:

- 15-30 days: call client

- 30-45 days: call client and site visit

- 45-60 days: send letter by regular and certified mail

- Over 60 days: Meet with City staff to arrange workout procedure.

A monthly Loan Status Report will be given to the City listing all open loans and payment status.

CDS will monitor and maintain current UCC filings and insurance certificates on the loan collateral, and release the collateral when the loan is paid off.

2. Business Loan Program Marketing and Lending Activities

CDS will meet regularly with local bank staff to market the City's loan program and search out referrals and companion loans. The face-to-face meetings will be followed up with telephone contacts to bank commercial loan department contacts. CDS staff will also participate in provide loan program workshops with local vendors. CDS will also work closely with City staff to advise potential borrowers of the availability of business loan funds, provide information as needed, and pursue potential deals as appropriate.

CDS will screen all loan applicants using CDBG public benefit and fundamental credit analysis criteria, ask promising candidates to submit a complete loan application, along with the necessary accompanying financial information, and then prepare the loan package. We will prepare the loan memorandums and make recommendations to the City Loan Committee. If approved, we will then present the loan to HCD staff for review and approval as required. CDS will manage the escrow process and generate the closing documents and escrow instructions. In cooperation with the City and the title company, we will manage the release of the funds. These functions will be provided in compliance with HCD CDBG requirements and industry standard procedures.

If a current borrower requests a loan restructure (change of terms or collateral), CDS will review and analyze the current financial situation of the business and prepare a memo for presentation to the Loan Committee for their consideration of the loan restructure.

3. Reuse Fund and Open Grant HCD Reporting Activities

CDS will prepare quarterly and annual reports for the CDBG PI Reuse Fund. Statistical information for the report will be acquired from the City Finance Department and the report information will be coordinated with the City in advance. CDS will prepare open grant reporting such as, Fund Requests, Financial Activity Reports (FAR), ED Progress Reports, Annual Grantee Performance Report (GPR). Loan specific information, such as public benefit reporting will be obtained and reported by CDS. The prepared reports will be submitted to the City for review, signature, and transmittal to the State HCD.

4. Reuse Fund and Open Grant General Administrative Activities

CDS will prepare the City for monitoring in advance of the actual monitoring by providing accurate and complete documentation in accordance with HCD standards. We will identify and correct any gaps and assist in scheduling the monitoring. CDS staff will be present during the monitoring. CDS will draft any follow up or response information needed as a result of the monitoring.

CDS will review the City's Program Income Reuse Plan and update and revise the Reuse Plan in order to facilitate the City's economic development, redevelopment, land use strategies, community facilities, and housing needs. CDS will assist the City, in accordance with HCD CDBG Reuse Fund requirements, to implement the utilization of program income in a timely and equitable manner and in full compliance with HCD CDBG overlay requirements.

CDS will provide ongoing liaison and advocacy on the City's behalf with its State representative regarding all CDBG issues. CDS will coordinate this activity with the City Community Development Director.

CDS will attend workshops, trainings and conferences that further our capacity and ability to provide administration and activity delivery services effectively and efficiently for the City of Auburn.

CDS will work with City staff to expand the staff's knowledge and capacity with regard to utilization of CDBG funds in accordance with existing City housing and economic development goals and objectives.

CDS will coordinate quarterly meetings at City Hall with City staff to cover all issues regarding the appropriate use of CDBG Funds.

5. Grant Applications

CDS will prepare for the City upon written authorization applications for funding, including but not limited to, CDBG Enterprise Fund, CDBG Over-the-Counter, CDBG Planning and Technical Assistance, and other funding programs for which the City desires to have an application prepared.

6. Budget and Fees

Task #1:	Loan Servicing Activities	\$ 35 per month per loan
Task #2:	Loan Marketing/Lending Activities	\$ 125 per hour
Task #3:	General Administrative & HCD Reporting Activities	\$ 125 per hour
Task #4:	Reuse Fund and Open Grant General Administrative Activities	\$ 125 per hour
Task #5:	Grant Writing	\$ 125 per hour

Section 1: Anti-Lobbying Certification

The Grantee shall require that the language of this certification be included in all contracts or subcontracts entered into in connection with this grant activity and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and no more than \$100,000 for such failure.

"The undersigned certifies, to the best of his or her knowledge or belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, he/she will complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions."

Section 2: Conflict of Interest of Members, Officers, or Employees of Contractors, Members of Local Governing Body, or other Public Officials

No member, officer, or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for grant activities to be performed in connection with the program assisted under this agreement. The Grantee shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

Section 3: Audit/Retention and Inspection of Records

- A. The Grantee must have intact, auditable fiscal records at all times. If the Grantee is found to have missing audit reports from the State Controller's Office ("SCO") during the term of this agreement, the Grantee will be required to submit a plan to the State, with task deadlines, for submitting the audit to the SCO. If the deadlines are not met,

the Grantee will be subject to termination of this agreement and disencumbrance of the funds awarded. The Grantee's audit completion plan is subject to prior review and approval by the State.

- B. Grantee agrees that the Department of Housing and Community Development (HCD) or its delegatee will have the right to review, obtain, and copy all records pertaining to performance of the contract. Grantee agrees to provide HCD or its delegatee with any relevant information requested and shall permit HCD or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with PCC § 10115 et seq., GC § 8546.7 and 2 CCR § 1896.60 et seq. Grantee further agrees to maintain such records for a period of four (4) years after final payment under the contract. Grantee shall comply with the caveats and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in PCC § 10115.10.

EQUAL OPPORTUNITY
STANDARD CONTRACT LANGUAGE:
ALL CONTRACTS AND SUBCONTRACTS

1. The Civil Rights, HCD, and Age Discrimination Acts Assurances:

During the performance of this agreement, the Grantee assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, handicap, religion, familial status or religious preference, under any program or activity funded by this agreement, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, and the Age Discrimination Act of 1975, the Fair Housing Amendment Act of 1988, and all implementing regulations.

2. The Training, Employment, and Contracting Opportunities for Business and Lower-Income Persons Assurance of Compliance:

- a) The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3, of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- b) The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c) The Grantee will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advertising the said labor organization or worker's representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d) The Grantee will include these Section 3 clauses in every contract and subcontract for work in connection with the project and will, at the direction of the State, take appropriate action pursuant to the contract upon a finding that the Grantee or any contractor or subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135, and will not let any contract

unless the Grantee or contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

- e) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the agreement shall be a condition of the Federal financial assistance provided to the project, binding upon the Grantee, its successors, and assigns. Failure to fulfill these requirements shall subject the Grantee, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

3. State Nondiscrimination Clause:

- 1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee, or applicant for employment because of race, religion, color, national origin, ancestry, physical disability, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7258.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- 2. This contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

"The Contractor hereby agrees to abide by the requirement of executive order 11246 and all implement regulations of the Department of Labor."